



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 9, 1992

Mr. Leonard W. Peck, Jr.
Assistant General Counsel
Texas Department of Criminal Justice
Institutional Division
P. O. Box 99
Huntsville, Texas 77342-0099

OR92-200

Dear Mr. Peck:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 14749.

You have received a request for information about the name of a Texas Department of Criminal Justice (the "department") employee. Specifically, the requestor seeks "the entire name of [Mary F. Wyatt] . . . [s]pecifically full middle name and maiden name." You claim that the requested information is excepted from required public disclosure by sections 3(a)(2), 3(a)(8), and 3(a)(17) of the Open Records Act.

We note at the outset that section 6(2) of the Open Records Act specifically makes public:

the names, sex, ethnicity, salaries, title, and dates of
employment of all employees and officers of governmental
bodies.

Section 3(a)(2) excepts from required public disclosure "information in personnel files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Section 3(a)(2) protects personnel file information only if its release would cause an invasion of privacy under the test articulated for section 3(a)(1) of the act by the Texas Supreme Court in *Industrial Found. of the*

South v. Texas Indus. Accident Bd., 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977); *See Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref'd n.r.e.). Under *Industrial Foundation*, information may be withheld on common law privacy grounds only if it is highly intimate or embarrassing and is of no legitimate concern to the public. In Open Records Decision No. 342 (1982), this office held that the name of a public employee was subject to required public disclosure.

We have examined the information submitted to us for review. We conclude that it is of legitimate public concern. Accordingly, it may not be withheld from required public disclosure under section 3(a)(2).

You also claim that the employee's middle and maiden names are excepted from required public disclosure by section 3(a)(8), which excepts:

records of law enforcement agencies and prosecutors that deal with the detection, investigation, and prosecution of crime and the internal records and notations of such law enforcement agencies and prosecutors which are maintained for internal use in matters relating to law enforcement and prosecution.

When the "law enforcement" exception is claimed as a basis for excluding information from public view, the agency claiming it must reasonably explain, if the information does not supply the explanation on its face, how and why release would unduly interfere with law enforcement. Open Records Decision No. 434 (1986), (citing *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977)); *see also* Open Records Decision No. 413 (1984); MW-381 (1981); (Department of Corrections is a "law enforcement" agency within the meaning of section 3(a)(8)).

You advise us:

we believe that both maiden and middle names of prison employees are excepted from release . . . in that release of this much detail about employees exposes them to an unreasonable risk of harassment and badgering by inmates in their friends. . . .

We agree that release of an employee's marital status may result in harassment and undermine a legitimate law enforcement interest. *See* OR91-542. In this instance, however, the requestor does not seek the employee's marital status, but only her full

name. You have not indicated how release of the requested information would reveal the employee's marital status. A person may retain a middle or maiden name regardless of marital status. Therefore, you have not explained how release of the information would undermine a legitimate law enforcement interest, nor do the documents submitted to us for review supply such an explanation on their face. Accordingly, the requested information may not be withheld from required public disclosure under section 3(a)(8).

Finally, you claim that the requested information is excepted from required public disclosure by section 3(a)(17)(B), which excepts "the home addresses, home telephone numbers, or social security numbers of employees of the Texas Department of Criminal Justice . . . or the names or social security numbers of their family members." You claim that section 3(a)(17)(B) applies because "it tends to provide information about the marital status and therefore about the family status of employees." For the reasons discussed above, we conclude that release of a person's middle or maiden name is not necessarily indicative of her marital status. Nor do we think such information discloses names of "family members" within the section 3(a)(17) exception. If that were the case, the employee's surname also could not be disclosed, a result we think would be at variance with the intent of the applicable provisions of the Open Records Act. Accordingly, you may not withhold the requested information under section 3(a)(17)(B). The employee's middle and maiden names must be released.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR92-200.

Yours very truly,

A handwritten signature in black ink, appearing to read "William Walker", is written over a horizontal line.

William Walker
Assistant Attorney General
Opinion Committee

WW/lmm

Ref.: ID# 14749
ID# 14610
ID# 14678